

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1



ITEM No.302
I.A/165(AHM)2023 in
C.P./377(AHM)2018

Order under Section 60(5)(C) of IBC,2016 r.w.
Reg 32(E) & 32A IBBI Reg,2016 r.w. Rule 11 of NCLT,2016

IN THE MATTER OF:

Rajeshkumar Enterprises through
Its Sole Proprietor Mohammed Arif
Mohammed Umar Qureshi
V/s

.....Applicant

Devang P Sampat Liquidator for
Kanoovi Foods Pvt. Ltd. & Anr

.....Respondent

Order delivered on: 05/12/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, AHMEDABAD**

**IA/165(AHM)2023 in
CP(IB)/377(AHM)2018**

An application under Section 60(5)(C) of the Insolvency and Bankruptcy Code, 2016 R/W Regulation 32(E) and 32A of IBBI (Liquidation Process) Regulations, 2016 R/W Rule 11 of NCLT Rules

In the matter of Kanoovi Foods Private Limited

RAJKUMAR ENTERPRISE

Through

Its Sole Proprietor

Mohammed Arif Mohammed Umar Qureshi

124, The New Gujarat Kabadi Market 2,

Bhula bhai park road,

Behrampur, Ahmedabad- Gujarat-380022

... Applicant

Vs

1. SH. DEVANG P. SAMPAT

Liquidator

Kanoovi Foods Private Limited (in Liquidation)

#615, Shivalik Plaza, Plot 78/A, Marol Co-Op.

Industrial Estate, Off. Andheri Kurla Road,

Marol Andheri(East), Times Square, Mumbai- 400059

2. Registrar of Companies- Ahmedabad

ROC Bhavan, Opp. Rupal Park Society,

Behind Ankur Bus Stop,

Naranpura, Ahmedabad- 380013, Gujarat

... Respondents



Order Pronounced on 05.12.2023

CORAM:

SHAMMI KHAN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant(s): Mr. Navin Pahwa Sr, Adv. with
Ms. Gauri Sethi Adv.

For Respondent: Mr. Anip Gandhi, Adv with
Liquidator in person

O R D E R

Per: Bench.

1. The present application is filed under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 R/W Regulation 32(E) and 32A of IBBI (Liquidation Process) Regulations, 2016 R/W Rule 11 of NCLT Rules in CP(IB) No. 377 of 2018 seeking certain the reliefs and concessions with following prayers: -

(a) This Hon'ble Adjudicating Authority be pleased to allow this application;

(b) This Hon'ble Adjudicating Authority be pleased to grant the reliefs and concessions as referred in Para 26 of this application;

(c) This Hon'ble Adjudicating Authority may be pleased to pass any other order which this Hon'ble Tribunal



may deem fit in the facts and circumstances of the case.

2. It is stated by the applicant that this Tribunal vide order dated 26.7.2019 admitted the petition and initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. The applicant submits that thereafter, upon failure of the insolvency resolution process, the RP filed IA No. 818 of 2020 before the Adjudicating Authority seeking liquidation of the Corporate Debtor. The Adjudicating Authority vide order dated 13.1.2021 allowed IA No. 818 of 2020 and commenced the liquidation of the Corporate Debtor with the consequential appointment of Respondent No. 1 as the Liquidator of the Corporate Debtor. A copy of the liquidation order dated 13.1.2021 is placed at **Annexure-A1** of the Application.

3. It is stated that an e-auction sale notice dated 26.11.2021 came to be published by the Liquidator. As per the e-auction sale notice, the e-auction of the Corporate Debtor as a Going Concern was to be



convened on 15.12.2021. A Copy of the e-auction notice dated 26.11.2021 released by the Liquidator is placed at **Annexure A2** of the application.

4. It is stated by the applicant that in pursuance to the E-auction sale notice, the applicant submitted its Expression of Interest along with relevant document viz. Details of Potential Bidder as well as Affidavit and Undertaking. The applicant also submitted Confidentiality and Non-Disclosure Undertaking. The applicant filed its application form through online mode. The applicant also made necessary declaration. The applicant also submitted list of KYC Documents. The applicant also deposited an amount of Rs. 24,75,000/- towards earnest money deposit with the Liquidator as per the terms and conditions of Bid Document.
5. It is submitted by the applicant that as per the e-auction Notice, the e-auction held on 15.12.2021. In the said e-auction, the Applicant came to be declared as the Successful Bidder for purchase of the Corporate Debtor as a going concern for an amount of INR 2,52,50,000/-.



A Copy of declaration of the Applicant as a Successful Bidder is placed at **Annexure A3** of the Application.

6. It is stated that the Applicant was obliged to pay the balance amount of INR 2,27,25,000/- within 90 days in pursuance of the applicable law, however, due to some extraneous factors, he could not pay the balance sale consideration within the aforesaid time. The Applicant approached this Hon'ble Tribunal by way of IA/463(AHM)2022 and this Hon'ble Tribunal vide order dated 29.06.2022 was pleased to condone the delay. The copy of order dated 29.06.2022 is placed at **Annexure A4** of the application.
7. It is stated that in pursuance of the aforesaid order, the Applicant paid the balance sale consideration of INR 2,27,25,000/- with interest and other costs to the Liquidator as a result of which the Liquidator issued a Sale Certificate dated 06.07.2022. A copy of the Sale Certificate dated 06.07.2022 is placed at **Annexure A5** of the Application.



8. It is stated by the applicant that thereafter on 11.07.2022, the liquidator handed over the physical possession of all the properties of the corporate debtor the applicant. A copy of the letter acknowledging the handing over of the physical possession dated 11.07.2022 is placed at **Annexure A6** of the Application.

9. It is submitted by the Applicant that by virtue of sale of Corporate Debtor as a going concern to the Applicant vide sale certificate dated 06.07.2022, the Applicant has acquired the Corporate Debtor as a going concern as per Regulation 32(e) of Regulations, 2016). Thus, the applicant has paid the entire sale consideration to acquire the Corporate Debtor as a going concern along with all its assets including land and building, plant and machinery.

10. Certain Relief were sought by the Applicant against which the Reply was filed on 03.07.2023 under Diary No. D2396 by the Liquidator through an Affidavit stating as under:



- a) It is stated that the Applicant has acquired the Corporate Debtor as a going concern as per the provisions of Regulation 32(e) of the IBBI Liquidation Regulations, 2016 on 06.07.2022.
- b) It is stated that since the Buyer had submitted his Letter of Intent and paid the entire amount of the Sale Consideration as per the E-Auction Process documents, it is evident that he has also accepted the reliefs and concessions as mentioned and detailed in the E-Auction Process Documents. Surprisingly, after the entire process of sale of the Corporate Debtor has been concluded and the Possession of the Corporate Debtor as a going concern is handed over to the Applicant and when the Liquidator has filed an application for Liquidation Closure before this Hon'ble Tribunal, the Applicant by the way of filing this present Application is requesting for further reliefs and concessions which is not binding to the Liquidator and not as per the provisions of the Code.
- c) It is submitted by the Liquidator that the Applicant is asking the Liquidator to transfer the shares of the Corporate Debtor in the name of some third party/ person and not in the name of the Applicant. The Liquidator apprehends that the Applicant has further sold the Corporate Debtor to



such third party and the Liquidator cannot verify the same hence, the Liquidator is unable to transfer the shares to the persons as requested by the Applicant. Similarly, the Applicants have not provided details of the persons whom he wants to appoint as Director nor has given any relationship disclosures as per the provisions of IBC, 2016 and Companies Act, 2013, and hence the change in Directorship has not taken place.

d) It is further stated that the Applicant has sought reliefs and concessions from the Statutory Authorities including Income Tax and GST however the said Statutory Authorities are not made a party to this Application.

11. In response to the Reply filed by the Liquidator the applicant has filed the Affidavit-in Rejoinder dated 30.10.2023 under Diary No. D4238 states that the present IA is not for the transfer of shares by the Liquidator to the Third Person but for seeking the extinguishment of existing share Capital of the Corporate Debtor to enable the issuance of fresh share capital.



12. It is further submitted by Applicant that the Liquidator has taken another objection that details of the proposed board of directors have not been provided. It is further submitted that the applicant has already provided DIN numbers of both persons, however, for the information and records the applicant has placed the PAN card and Aadhar Card of both the proposed Directors in Annexure R-1 of the Affidavit.
13. The Applicant relied upon few judgments for which the applicant filed Additional Affidavit on 03.10.2023 under Diary No. D3801 to place on records are as under:
- i. KALS Distilleries Private Limited Vs. Ramakrishan Sadasivn Liquidator of Terra Energy Limited passed in IA No. 1424 of 2022.
 - ii. Gaurav Jain Vs. Sanjay Gupta, Liquidator of Topworth Pipes & Tubes passed in IA No. 2264 of 2020.



- iii. Profitplus Infra Private Limited Vs. Pradeep Kumar Kabra, Liquidator of Pacific Pipe Systems Pvt. Ltd. IA 411 of 2021.
- iv. Janhavi Dixit Vs. M/s. Hitech Services (Proprietor Dinesh Waghmare). IA 741 Of 2021.
- v. Pankaj Dhanuka liquidator of M/s Lanco Kondapalli Power Limited Vs. Radha Smelters Private Limited & Anr IA 830 of 2023.
- vi. Plutus Investments and Holding Private Limited Vs. Liquidator of Provogue (INDIA) Limited. IA no 794 of 2023.

14. We have heard the Counsels for the Applicant and respondent and have perused the documents placed before us.

Following are the Undisputed facts: -

- a) Corporate Debtor was sold under public auction by Liquidator under Regulation 32(e) of Liquidation Regulation.
- b) Sale Certificate issued by liquidator is evidence that entire consideration had since been paid.



c) Corporate Debtor is in control of the auction purchaser as of now.

15. In order to keep the Corporate Debtor as going concern with the new management certain relief's and concession have been requested by the auction purchaser. In support of the Contention which applicant has placed before us, order of Coordinate benches of different NCLT's.

16. After going through the same we are of the view that in the interest of justice and in order to keep the CD as going concern certain relief and concession can be granted by this tribunal. Accordingly, we grant/refrain to grant the following Relief's and Concession: -

Reliefs and Concessions

Para	Relief Sought	Orders thereon
26		
A	Extinguishment of Existing Share Capital All the shares, warrants, convertible bonds or any other instruments of like nature as may be issued by the Corporate	Granted in term of Ghanshyam Mishra V/s Edelweiss Asset Reconstruction Co. Ltd. by Hon'ble Supreme Court



	<p>Debtor, whether in Demat mode or physical mode, shall be extinguished in full without any consideration, and rights and liabilities arising out of the same shall also be extinguished without any further deed, act or procedure required under any law. Such reduction of share capital of the Company shall be effected as an integral part of the Sale as going concern of CD and the orders of the NCLT shall be deemed to be an order under Section 66 of the Act confining the reduction and no separate sanction under Section 66 of the Act will be necessary. The Company shall not be required to add the words "and reduced" as a suffix to its name consequent upon such reduction.</p>	
B	<p>Vacation of existing Board and Appointment of New Directors. The existing members appearing on the Board of Directors of the Corporate Debtor be removed</p>	<p>Granted in term of Ghanshyam Mishra V/s Edelweiss Asset Reconstruction Co. Ltd. by</p>



	<p>without any amount payable to them in any name including any severance compensation payable to them. Further, a direction be issued upon the Liquidator to appoint the following persons as the new directors on the Board of Corporate Debtor.</p> <p>1. Sh. Manoj Kumar Agarwal: DIN:01497794</p> <p>2. Sh. Anurag Jain: DIN: 02036605</p>	Hon'ble Supreme Court
C	<p>Extinguishment of previous Claims and Liabilities.</p> <p>All the claims or demands made by, or liabilities or obligations whatsoever of any type or kind, owned or payable to any actual or potential creditors, of the Corporate Debtor including but not limited to Employees dues, labor dues, creditors' dues, Government Dues or any statutory authority (including but not limited to liabilities, interest and penalties, duties, etc. on account of income-tax,</p>	Granted in term of Ghanshyam Mishra V/s Edelweiss Asset Reconstruction Co. Ltd. by Hon'ble Supreme Court-



	<p>Tax Deducted at Source (TDS), tax collection at source (TCS), Goods and Services Tax (GST), custom duty, Excise Duty, value added tax, service tax, Central Sales Tax, State Sales Tax, stamp duties, property tax, wealth-tax, cess, DGFT dues, Registrar of Companies, Investor Education and Protection fund, & other statutory dues, etc. whether direct or indirect, whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed in relation to any period prior to the date of passing order will be written off in full and shall stand permanently extinguished and the said extinguishment be reflected by way of charging Capital Reserve;</p>	
D	All the agreements/ documents entered into by the Company	Granted in term of Ghanshyam



	<p>with the Creditors will be deemed to be terminated without any liabilities, claims or obligations whatsoever arising out of or in relation to such contracts extinguished and the Company and the purchaser or its new management shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation to such agreements/ documents.</p>	<p>Mishra V/s Edelweiss Asset Reconstruction Co. Ltd. by Hon'ble Supreme Court-</p>
E	<p>The Financial Creditors shall remove the name of the Corporate Debtor as defaulter or Non-Performing Asset and declare its as "Standard" over the Credit Repositories including but not limited to TransUnion CIBIL Limited, Experian, Central Repository of Information on Large Credits etc and to issue necessary no due certificate to enable the Company to satisfy all charges registered with the office of the Registrar of Companies and or office of sub-registrar and</p>	<p>Granted to be complied with within a reasonable time</p>



	sign such form/ document as is required by such authority in order to satisfy/ cancel the charge over the properties of the Company.	
F	All the inquiries, investigations, assessments, notices, causes of action, suits, claims, disputes, litigations, arbitration, or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Corporate Debtor or the affairs of the Corporate Debtor (other than against the Erstwhile Promoters or former members of the management of the Corporate Debtor), pending or threatened, present or future, including any third party dispute, in relation to any period prior to the date of order or arising on account of Acquisition shall be deemed to be withdrawn or dismissed;	Granted in term of Ghanshyam Mishra V/s Edelweiss Asset Reconstruction Co. Ltd. by Hon'ble Supreme Court
G	All the civil or criminal, whether private or government,	Denied



	<p>proceedings that may have been filed or which could have been filed in future on account of any act, deed, non-compliance, misconduct or violation committed by the Corporate Debtor before the Date of Order shall be deemed to have been extinguished and no action shall be taken against the corporate Debtor or the new management thereof in future on account of any such act, omission or offence which are related to a period prior to the date of allowing the present application;</p>	
H	<p>Rights/Entitlements/Assets to be freed from all charges/encumbrances/set-off</p> <p>All the assets of the Corporate Debtor shall be freely available without any claim of any creditor thereupon. All charges/lien of whatever nature on the land and buildings and other assets of the Corporate Debtor by any</p>	Granted



	creditors including banks, statutory authorities like ROC, Stamp Authority, Tax Authority, etc. shall stand permanently extinguished from the date of passing of order;	
I	No financial assets including but not limited to the Tax Deducted at Source, Input Tax Credit (under GST), Cash Ledger (under GST) shall be adjusted by the statutory authorities against any claim, whether filed or not, whether crystalized or not, which is related to a period prior to the date of allowing the present petition.	Granted
J	No rights or entitlements, registrations, permits, licenses, grants including but not limited to PAN; TAN; GST Registration(s); Electricity Connection(s); Gas Supply Connection(s) shall be denied, forfeited, cancelled or revoked on account of unpaid dues, non-observation of terms or any other reasons of	Granted subject to condition that dues after the date of sale Certificate to be paid by the CD.



	whatsoever nature which took place in the period prior to the date of allowing the present application. Further, no adverse or special conditions, whether monetary or otherwise, shall be imposed upon the Corporate Debtor on account of any unpaid past arrears or misconducts.	
K	All the leases, licenses or rights as awarded to or entrusted with the Corporate Debtor to remain intact; and no hostile or recovery action shall ever be taken against the Corporate Debtor on account of past arrears or insolvency or on account of change of management which has resulted on account of the present acquisition.	Granted
L	Waiver of past compliances/omissions Any non-compliance of provisions of any laws including non-compliance with the statutory authorities including RoC and SEBI and non-	Granted for ROC only



	compliance of any rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permissions or non-filing of any returns or information with the statutory authorities for any period prior to the date of passing the order shall be deemed to be extinguished without any further deed, act or compliance required in this regard. Consequentially, all the statutory authorities be directed to remove the name of the Corporate Debtor from the list of defaulters/non-compliant entity without any further compliance of prior period;	
M	No actions shall ever be required to be done to rectify any omission or non-compliances which are related to the period prior to the date of allowing the present application.	Granted up to date of Sale Certificate
N	Vesting of Corporate Debtor to new Management	Granted subject to Compliance of



	<i>Upon extinguishment of the existing paid up capital, the Corporate Debtor will be at liberty to issue fresh shares in the manner deemed appropriate, without making any further acts except to file appropriate forms with the ROC/MCA Portal.</i>	new shares to be issued as per Companies Act, 2013
O	The status of the Corporate Debtor in the MCA portal shall be converted as “Active” from the status of “liquidation”	Granted
P	The bid submitted by the Applicant be considered to be a resolution plan for all purposes under the Income Tax Act, 1961;	CD to approach the respective authorities
Q	The brought forward tax losses of the Corporate Debtor (being in the nature of the assets of the Corporate Debtor) be permitted to be carried forward and set-off against future income as change of shareholding of the Corporate Debtor is pursuant to the bid submitted by the Applicants under the E-Auction Process;	CD to approach the respective authorities-



R	<i>The extinguishment of the debt shall not entail any liability on the Corporate Debtor under the Income Tax Act or any other law.</i>	CD to approach the respective authorities
S	The Corporate Debtor shall draw its financial statements in subsequent year(s) so as to reflect the true and fair value of its assets by writing-off the book value of its assets including but not limited to book-debts, inventories etc. and such write-off shall be claimed as losses under the provisions of the Income Tax Act, 1961.	Granted
T	The existing statutory Auditors would deemed to have resigned as Auditors of the Company and the new Board would be entitled to appoint new Auditor.	Granted

17. The Application is **allowed** with above direction.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

Shubhanshu/LRA